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In the Supreme Court of the United States

OCTOBER TERM, 1908

THE UNITED STATES OF AMERICA, COMPLAINANT

vs.

JOSEPH F. SHIPP, ET AL

INFORMATION IN CONTEMPT

BRIEF FOR DEFENDANTS NOLAN, JUSTICE, PADGETT AND MAYS

LEWIS SHEPHERD,
MARTIN A. FLEMING,
T. POPE SHEPHERD,
Attorneys for Defendants

In the Supreme Court of the United States.

THE UNITED STATES OF AMERICA,
Complainant,
vs.
JOSEPH F. SHIPP ET AL

BRIEF FOR DEFENDANTS NOLAN, JUSTICE PADGETT AND MAYS.

These defendants are charged with being members of the mob that lynched Johnson. They are not interested in the details of the occurrence at the County jail and bridge on the night of the lynching except to deny their presence and participation nor are they interested in the proof showing the history of the Johnson case and the condition of public sentiment with reference thereto. The only question to be considered, so far as these defendants are concerned, is their participation in the lynching.

Each one of the defendants filed an answer to the information denying his respective participation in the lynching and showing where he was on this particular night.

While the defense of each is separate and distinct and will be hereinafter treated separately there are some questions

that may properly be considered as applying to all alike and will be treated in one discussion.

The Johnson case has been a famous case in and around Chattanooga Tennessee from the time the crime was committed, until the present time. From the whole record it will be seen and can properly be inferred that the facts connected with the case have been prominently in the minds of the Chattanooga people at all times. Every step in the case was watched with intense interest by almost every citizen and the subject was, evidently, constantly under discussion during the time from the arrest of Johnson to the night of the lynching. So in times of such great interest it is comparatively an easy matter for a man to remember his actions and whereabouts on that eventful night in the City of Chattanooga. At any ordinary time, or upon any ordinary night where there is nothing to particularly impress one's mind at that time or later, it is usually a difficult matter, after a lapse of a few weeks, to fully remember the occurrences of such a time or with certainty to identify such time with particular occurrences. But it is different at times of extraordinary events, whether such events are known at the time or ascertained later. A report on the following morning of some extraordinary occurrence of interest to every one in a community would have the result of recalling vividly to one's mind where he was and what he had been doing at such time. It is therefore entirely reasonable that these defendants could give an account of their actions on the night of March 19th, 1906, when Johnson was lynched. And it is also entirely reasonable that their several actions could be identified with this particular night.

Nolan in his answer to the information denied his presence and participation in the lynching of Johnson, and showed where he was on that night during the time of the lynching. His claim is that he was at his place of business over a mile from the County jail up to about 9.30 P. M., that he then went to the saloon of his brother and remained there until a little after 10 P. M. at which time the saloon was closed for the night, that he then went to his home near by and there remained until the following morning.

Nolan testified to the above facts, denying any knowledge of or connection with the mob (964-967).

John Nolan, a brother of the defendant testified that he conducted a saloon about a block from defendant's place of business, that on this night defendant was at witness' saloon from about 9.30 P. M. to about 10.15 P. M. (936) he left his saloon with defendant shortly after closing time, 10 P. M. and from the saloon went to defendant's house (943).

There was a matter of business pending between witness and defendant and discussed at that time (943).

J. C. Williamson testified that he was in the saloon of John Nolan on that night and saw and talked with the defendant from about 9.40 P. M. to 10 P. M, at which time witness left the saloon on account of closing time (948).

The Nolan brothers were discussing a business proposition (948).

These witnesses base their estimate of time on the saloon closing time, which was 10 P. M. by ordinance of the City of

Chattanooga, this enabled them to fix the time with certainty.

Alfred Smith a colored porter for defendant testified that defendant was at his saloon on that night from 6 P. M. to 9.30 P. M. (955-6). All these witnesses show that they remembered this night as the time Johnson was lynched; and are certain and positive. Smith says, "I heard they lynched him that night, and that made me remember it was that night, the next morning, I didn't know it until that next morning," (955).

Williamson says: "No sir, no more than just being that the thing was not done every day, you know, it made me recall where I was, and all about it. I saw it in the paper, and it was talked at the shop where I worked."(951).

From the nature of this testimony there is no middle ground. It is either true or false. There is no chance of a mistake in fact. The witnesses testify in an intelligent manner and stand before the Court as credible.

Complainant rests its case on the testimony of Ware, Franklin and Gibson. The statement of Ware's testimony in complainant's brief is not accurate nor fair to the defendant.

Ware testified,

Q. Did you recognize the man?

A. No, I cannot say that I did.

Q. Did you think you recognized him at that time?

A. Well I thought I knew but I would not be sure

Q. Who was that?

A. Do you want facts or just my ideas about it?

Q. You know whether you recognized him or not of course.

A. I say I thought I did, but I will not say I did. I would not make affidavit that I knew him.

Q. How long have you known the man you thought you recognized?

A. I have known him quite a while.

Q. How well have you known him?

A. Not so very well—not enough to recognize him and know him in the dark.

* * * * *

A. I thought I recognized one of the parties as Nick Nolan. (416-7)

* * * * *

Q. Mr. Ware I understand you to say that you were not at all certain you recognized Mr. Nolan there?

A. I am not.

Q. Your acquaintance with Mr. Nolan was so slight that you were not able to recognize him there on the bridge in the dark that night?

A. That is right. (424).

The man thought to be Nolan by Ware is the same man that struck the reporter, Pritchard (426).

The above quotation from Ware's testimony shows that he was very uncertain as to the identity of Nolan. He refuses to testify as a fact that he saw and recognized Nolan on that night and consequently his testimony is of little weight, and of slight probative effect. In fact his testimony even if uncontradicted would not establish Nolan's presence. The man Ware thought was Nolan was another man.

Chivington, a reporter, who was first introduced by the complainant, was within two or three feet of Pritchard when he was struck (910).

Chivington was well acquainted with Nolan (910). He saw the man that hit Pritchard and that man was not Nick Nolan (910). He saw the man's face and knows that it was not Nolan (910, 917).

Pemberton, Deputy Circuit Court Clerk, saw the man that hit Pritchard. He says that he did not see the man's face but from his size and general appearance he don't think he was Nolan. He described the man as a much larger man than Nolan (920).

So we have Ware's uncertain identification offset by a positive statement of one witness that Ware is mistaken and by a statement of another witness more positive and certain than Ware.

Gibson, the night jailer testified that he thought one of the masked men was Nick Nolan.

> A. Well I thought I knowed Nick Nolan. The man that I thought was Nolan had a mask over his face.
>
> Q. That was Nick Nolan, that you thougth was Nolan, the defendant in this case I mean.
>
> A. I don't know whether it was him or his brother, it looked very much like him. (2028).
>
> * * * * *
>
> Q. How did you recognize him.
>
> A. It was more by the size of the man.
>
> Q. And what else.

A. And his face was not visible to me. More by the size of the man I took it to be him. (2025).

Some man was called "Nick" in the crowd and this helped witness to think he recognized Nolan. (2025).

Q. State whether or not if it had not been for some one in that party used the name "Nick" you would have supposed it was Nick Nolan.

A. That was the name that made me incline to think so.

* * * * *

A. I just heard somebody say "Nick". (2052).

On cross examination witness stated that he did not "mean to say positively that I recognized him." On being asked if witness identified defendant as the man he recognized at the jail, witness stated "The man that I thought was Nolan was a smaller man, apparently. If he could stand up I could tell more about it".

"(The defendant Nick Nolan stood up as requested.)"

"Witness, He was a lower man it seemed to me."

* * * * *

A. Well the man I recognized and according to my judgment I thought was Nolan, was a smaller man than this one. (2050-2051).

* * * * *

A. No I don't recognize him as the man. (2052).

Gibson was a witness before the Hamilton County Grand Jury shortly after the lynching and testified that he did not recognize any member of the mob (2054)

2057

Witness thought that one of the Nolans was in the mob. (2055-2057).

> A. "There was a small man there and I just got it in my head some way that it was Nolan and I had heard "Nick" called in the crowd". (2058).

The testimony of this witness is uncertain as to Nolan. It could not be otherwise in view of the fact that the man was masked. His recognition so far as it went was by size and appearance and when defendant stood before the witness at the hearing he refused to say he was the man and stated further that the man he recognized was a smaller man than defendant. About all Gibson's testimony amounts to is that he thought one of the Nolan boys was in the crowd. This cetainly cannot be sufficient evidence to condemn the defendant even though there was no contradictory testimony.

Then again Ware and Gibson don't agree as to which man was Nolan. Gibson says his Nolan had a mask, while Ware's Nolan was without a mask. Gibson's Nolan was a small man while Ware's Nolan was larger.

Joe Franklin, colored testified that he saw Nick Nolan at the jail on the night of the lynching.

Through all the testimony there is carried a distinction between the mob and the spectators, the "first crowd" was the mob and the "second" or "back crowd" was made up of spectators. Franklin says that the man he recognized as Nolan was in the back crowd and not with the mob. (650). The witness is involved in contradiction on nearly every part of his testimony and this to such extent by credible witnesses that his testimony can have but little, if any weight. It would seem

that Franklin's Nolan was a different man from either Ware's or Gibson's for the other Nolans were actively engaged in the mob while Franklin's Nolan was a peaceable onlooker.

Franklin says he was in the Northwest gate of the Court House yard (529), when the mob passed up Walnut Street. (530). Pemberton says he came out by this gate and Franklin was not there (919), there was no one on the steps or in the gate (919). The gate is about 6 or 7 feet wide (931). It would have been impossible for a man to pass out of this gate without seeing another man sitting in the gate way.

H. P. Fry, a lawyer, testified that Franklin told him on the day after the lynching that he, Franklin, was not at the jail that night, "that he started towards the jail, and concluded it was not a safe place for a nigger, and left". (746). This conversation occured on the afternoon of the day following the lynching when the subject was fresh and under general discussion. (746).

Without pointing out in detail, the entire testimony of the witness exhibits a great amount of prejudice against the defendants. His willingness to testify against the defendants, his reluctance on the other side, and his general demeanor on cross examination shows that he regarded the issue as one between the whites and the blacks and he was decidedly in favor of the blacks,

Franklin's record is not at all good. He has been indicted several times in the Courts of Hamilton County Tennessee. (537, 546, 548) and in one case admitted guilt of defrauding the County by collecting illegal fees. (542).

The testimony of this witness stands by itself. There is no corroboration by Gibson and Ware for the reasons that evidently each is attempting to identify a different man. So we have Franklin standing alone with strong contradictions in almost every particular. His statements as to what happened at the jail are denied by the sheriff and the deputies, his statement that he was in the Court house yard gate is flatly denied by Pemberton and he has himself stated that he was not at or about the jail on that night. With this unfavorable condition is Franklin's testimony to be taken as conclusive of Nolan's presence in the face of the positive evidence of Nolan's witnesses detailing his whereabouts on that night?

Under a fair construction of all the evidence the Government has failed to show Nolan's participation in the mob. His alibi is well supported by competent proof and his defense is sustained by the great weight of the evidence.

BART JUSTICE

This defendant answering said that he was not at the County jail on the night of the lynching, and had no connection with or knowledge of the mob or lynching of Johnson. On that night he was at his home in St. Elmo several miles from the jail, and a part of the time visiting at a neighbor's house. Justice testified to the foregoing facts (751-756).

James F. James testified that on the night of the lynching defendant was at his house from about 7 P. M. to after 10 P. M. Witness' wife was sick and defendant's wife and daughter came over to call on her (720-721). Witness remembers this night on account of his wife's illness (721) and by

being with defendant on the following morning when he first heard of the lynching (722).

Fred Fryar, next door neighbor to James testified that defendant was at the house of James that night. He heard defendant talking on the porch and heard him say "Good night," something after nine o'clock (727, 731). Witness was with defendant on the following morning when they heard of the lynching (727).

Mrs. Adelia Justice, wife of defendant, was with defendant on this night at James' house from 7 to 10 o'clock P. M. (735). Miss Emma Justice, daughter of defendant, was with her father and mother that night (736).

The witnesses James and Fryar have no interest in this matter, they testify intelligently and give sufficient reasons why they recall this particular night. The testimony is positive and direct and does not admit of a mistake in fact.

In the brief Counsel for the Government first say that it must be remembered that this defendant was a member of the first mob that tried to lynch Johnson.

Defendant was asked about this. He stated that he was present as a spectator in company with such men as Judge McReynolds, Attorney General Whitaker and H. Clay Evans. He was requested to act on a committee to examine the jail. Later defendant made a speech advising the crowd to disperse (759-763). Defendant is six feet one inch high and weighs from 215 to 236 pounds (736).

The man identified as Justice was evidently the leader of the mob.

The Government's case is made by the testimony of two negroes. William Tarpley, a prisoner at the jail and Joe Franklin.

Tarpley was confined on the second floor of the jail. The mob came into the jail on the floor above him and went up another floor to where Johnson was confined (348).

Tarpley says he could see Justice through an inch crack (346). Justice did not have a mask (347).

It was impossible for a man located as Tarpley was to see a member of the mob on the upper floors (374).

The map of the jail shows that Tarpley has testified falsely (2196). Physical facts are the strongest contradiction of a witness known to the law. Tarpley could not have seen Justice without looking through solid walls of steel and brick.

Joe Franklin testified positively that he saw Justice as the leader of the mob (517, 519). He says "if Justice wasn't there, there aint no Christ in heaven." Such statements as this necessarily weaken the testimony. It shows an extravagant imagination and an intense interest in the out come of the case.

Justice wore a mask according to Franklin (521).

The description of the leader of the mob does not correspond with Justice (327). Witness Curtis says that the man was smaller than defendant when the defendant stood before him at the hearing (372). Ware says that Justice was not in the mob (707). He is very positive that Justice was not in the crowd that brought Johnson out of the jail. He says,

> A. I would have recognized him above any one that was there (707).

A. No Sir, he could not have been there without my seeing Bart Justice (709.)

The positive statements of this witness are based on his close acquaintance with Justice and the unusual size and general appearance of the man.

Witness saw the leader of the mob and knows he was not Justice (710).

Pritchard says there was a man who resembled Justice in size and general appearance but he was not Justice. He met this man at a later date and had a talk with him (1285).

Pemberton says Franklin was not as claimed by him at the northwest gate of the Court house yard when the mob passed up Walnut Street (919).

Fry says Franklin told him that he only started to the jail and didn't go to the jail (746).

The testimony of Tarpley cannot be of any weight. Clearly he was drawing on his imagination.

So the case must rest alone on Franklin's testimony.

This testimony is contradicted by Ware in the most positive terms. Ware could not have been mistaken in what he said. He doesn't leave the government any ground for saying that Justice might have been there and witness not have seen him, for the very man identified by Franklin was not Justice, nor was Justice in that crowd. Curtis saw the leader and stated that he was a smaller man than Justice.

Franklin's testimony was more fully discussed in the brief for Nolan above and the statements there made apply with equal force.

Without considering the alibi testimony the weight of the evidence is against the Government.

Supported by only one witness of doubtful character in the face of respectable proof to the contrary the Government's case must fail.

The alibi of defendant is fully and completely made out, and is not assailed by the Government. The Court is asked to believe one witness, who throughout his testimony shows great bias, and to disbelieve six or more witnesses who testify intelligently and without any signs of bias or prejudice.

There is no reason suggested for setting aside the oaths of these parties. The Court is, in justice, bound to follow the weight of the evidence.

HENRY PADGETT AND WILLIAM MAYS

These defendants answered denying their participation in the lynching. Padgett shows that he was at the Stag Hotel during the evening of the day of the lynching.

Mays shows that he was at his home after about 6 o'clock P. M. Neither knew anything of the lynching until the next morning.

Padgett testified that he was at the Stag Hotel from about 6 o'clock P. M. until after 10 o'clock P. M. (1040, 1041).

Albert C. Chambers testified that he was at the Stag Hotel with Padgett from 6 to 10 P. M. (979). Witness had been that night to put his mother-in-law on the train and stopped in at the pool room (986). He remained until the saloon closed at 10 P. M.

David H. McJunkins states that he was with Padgett at the Stag Hotel on this night. He first saw Padgett about half past eight and left with him after 10 o'clock (996). This witness can easily recall his actions of that night for the reason that he was required to prove an alibi on the following morning by his mother (995).

W. B. Gray states that he saw Padgett at the Stag Hotel from 8 to after 10 P. M. (1005). He remembers the particular night because he and McJunkins had talked of the events of this night on the next morning, (1005) and recalled where they were. (1017).

Thomas F. Duckworth states that he was with Padgett at the Stag Hotel from about 9 to 10 P. M. on this night. Witness had been to a lodge meeting and came by the hotel afterwards (1018-9). Witness left the hotel with Padgett and walked to a street car line where Padgett boarded a car. (1019).

These witnesses have each testified in a straight forward intelligent manner. There is nothing so remarkable in their testimony as to justify the statement in Counsel's brief that they are unworthy of belief. True they are friends and associates of the defendant, but where could he get proof of his whereabouts except from his associates? Each one gives a reasonable account of his actions that night and a proper reason for remembering the details. It is not quite fair to charge that witnesses are unworthy of belief because, perchance, they have testified in favor of the opposite side in a law suit. There should be some respectable evidence on which to base such charge before it is justified.

The witnesses are positive and certain and their testimony leaves no ground for mistake.

William Mays claims that he was at his home on this night after about 5:30 o'clock. In going up his steps he fell and skinned his nose (872). Defendant's daughter was at home that night, but was unable to testify on account of illness (874, 975).

Defendant's wife testified that he was at home after 7 o'clock on this night. He had a skinned place on his nose when he came home (902). While there is not so much testimony to establish Mays' whereabouts on that night it is equally as strong for the reason that if an alibi was to be fabricated it would certainly be supported by more witnesses. There is necessarily only a few witnesses that can testify to a man being at his home on any night. The members of his family or perchance some neighbor or friend who has called. The Government's theory is that Padgett and Mays were together. If both alibis are false why didn't Mays take advantage of Padgett's testimony and thus have a stronger case made out? Why would he say he was at home when he could make a stronger case by saying he was at some other point? If Padgett's witnesses have testified falsely they wouldn't have objected to including Mays. It would seem that the apparent weakness of Mays' alibi is a tower of strength to both of these defendants.

The Government relies on the testimony of one John Stonecipher to convict these defendants. There is no proof that these defendants were seen at the jail that night. The case is based on certain statements and admission made by

them to Stonecipher. Stonecipher says there was a conversation before the lynching in which Padgett and Mays were expressing dissatisfaction with the course of the Johnson case. There is nothing in this conversation to show that these parties were intending or making preparations to lynch Johnson.

On the next day Stonecipher claims that he heard a conversation between Padgett and one Alf. Handman, in which Padgett was charging the newspaper with printing a lie. Witness says: "I said how do you know it was a lie Henry?"

Q. What did he answer?

A. Well, he told me he was there.

A. And Henry says we did the nigger up alright didn't we. Alf. says, You bet we did. (268).

With reference to Mays, witness says:

A. "Yes Sir, he had the left side of his nose skinned up pretty bad and I says, Hello Bill, what is the matter with your nose? He says, I skinned it last night breaking that damn jail door down in getting the nigger out". (268).

Thomas A. Dobbs is quoted in the brief as sustaining Stonecipher. He sustains him only on the question that there was a conversation on that morning relative to the Johnson lynching.

On the vital point as to whether Padgett said he was in the mob he does not sustain Stonecipher.

Witness says: "I heard a general conversation in front of Ransom's saloon".

Q. "State what was said in that conversation.

A. I don't know as I paid much attention to it. I didn't hear all of it. I wasn't paying much attention.

I heard Henry Padgett say they fixed that damn nigger last night. That is about the only thing I heard in regard to that".

A. "As well as I understood, I think he said they fixed the nigger last night. That is the way I understood him". (494).

Padgett denies the conversation before the lynching (1038). He states that he don't remember of talking with Stonecipher on the morning after the lynching, but is positive that he never used the expression "We did the nigger up last night". He states further that he was at the Stag saloon on that morning and saw Dobbs and Stonecipher.

Mays denies both conversations detailed by Stonecipher. (874). He was not with Padgett, Dobb and Stonecipher on the morning after the lynching. Dobbs says that Mays was not present (494). Stonecipher spoke to Mays on the street. He does not claim that Mays was present at the Padgett conversation (268). Mays says he passed Stonecipher on that day in front of one of the saloons, either Ransom's or the Stag (893), but don't remember that he had any talk with him. (896).

The foregoing completely covers the evidence against these defendants.

The witness Stonecipher stands alone and unsupported in his statements, and is contradicted by both defendants and by the witness, Dobbs. It is altogether probable that some thing was said about the lynching when Padgett, Dobbs and Stonecipher met. It would have been natural for that subject to be under discussion on that morning wherever men stopped to talk.

Padgett don't remember what was said except that he didn't state that he was a member of the mob. Don't it strike this Honorable Court as a remarkable proposition that a man would openly in a public place to a mere acquaintance state that on the night before he had committed murder? Every man in a law abiding community knows that murder is unlawful and is punishable by death or imprisonment. Is it reasonable that these men would lay themselves liable to such penalties by such indiscriminate talking? It would seem that a man who has committed murder would in every way attempt to conceal the crime and thereby avoid the punishment. So Stonecipher's story is highly unreasonable and for that reason should be given less weight than evidence of a reasonable nature. The testimony of Dobbs, as to what occurred, comes within the rules of reason. It is certainly more to be believed than Stonecipher's statements in view of its nature and the further fact that Stonecipher was shown to be utterly unworthy of belief.

Then again the nature of the conversation is such that a Court cannot afford to call it evidence. At the most it was thoughtless, idle talk or as sometimes expressed as barroom gossip. Can such talk be considered as sufficient proof of murder?

Then again if all that Stonecipher says is true and it should be considered as a confession, there is not a case made out for the reason that defendants have shown by an abundance of competent proof that they did not participate in the mob. Under the rule of first trying to make all the witnesses speak the truth the innocence of defendants is consistent with the testimony of every witness.

Stonecipher is unworthy of belief.

A. W. Boyd (616).

A. N. Sloan (658).

W. B. Cox (669).

Ewing White (1029).
M. T. Pitner (1033).
John R. Pitner (1116).
H. D. Rider (1124).
T. J. Moody (1132).
T. J. Sholl (1142).

Some of these witnesses have known Stonecipher since he was a boy and know his reputation both in Chattanooga and in his former Georgia home. They unhesitatingly say that his reputation is bad and that he is not entitled to credit on his oath.

It is not at all clear why this man Stonecipher should have shown so much interest in this case, but it does appear that he thought the killing of his nephew was in some way connected with the mob. (280). At any rate he had interested himself and was working on the case. (281).

Giving Stonecipher's testimony the most favorable light it does not in any degree prove participation, nor overcome the alibis set up and relied on by these defendants.

These cases are in effect criminal cases and in weighing the evidence the rules in criminal cases should prevail.

Whether the reasonable doubt rule should prevail or not the Court should require strong and convincing proof before convicting these defendants and inflicting punishment. The evidence should be stronger than a mere preponderance as in civil cases. There is something more important than property rights and consequently more strictness reqired. The freedom and liberty of a citizen should not be taken except on the strongest and most convincing proof.

We submit that the evidence in all these cases falls far short of the necessary convincing force and the defendants are entitled to be discharged.

Respectfully submitted.

LEWIS SHEPHERD,
MARTIN A. FLEMING,
T. POPE SHEPHERD,
Attorneys for Defendants.

In the Supreme Court of the United States.

OCTOBER TERM, 1908.

THE UNITED STATES OF AMERICA, complainant, vs. JOSEPH F. SHIPP, ET AL. } No. 5, Original.

BRIEF FOR JEREMIAH GIBSON.

May It Please the Court:

On behalf of this defendant, we refer to and adopt the brief and argument filed on behalf of Captain Joseph F. Shipp, the sheriff.

The defendant, Jeremiah Gibson, was the night jailor, and arrived at the jail about 6:15 or 6:30 o'clock on the night of the lynching. It is insisted he is guilty of aiding and abetting the lynchers, because he did not summons assistance and prepare to offer resistance to the members of the mob before they arrived. Counsel for the Government, in their brief, say:

> "His neglect in this respect is sufficient to sustain the charge that he aided and abetted the mob."

The proof in this cause set out and referred to in the brief filed on behalf of Captain Shipp shows beyond question

that no mob was expected on the night of March 19th, 1906, and that nothing had occurred to cause any reasonably prudent person to apprehend that the jail would be attacked. It is insisted, however, that the testimony of Mrs. Ellen Baker shows that the defendant Gibson knew the mob was coming. She testifies that she was a prisoner in the jail, and some time in the afternoon before sundown (on the day of the lynching) she went down into the office of the jail to get some one to write a letter for her, and the jailor said to her:

> "You hurry on and go on up back to your room. There is a mob coming in here."
>
> (*R. p.* 243-244.)

This statement, she said, was made by Mr. Gibson, the night jailor. This woman admits she was in jail for illicit traffic in whiskey, and her cross-examination shows that she was an old offender, along this line. (*R. p.* 245-251.)

It is shown by the testimony of W. T. Center (*R. pp.* 1127-1129), and J. H. Stuart (*R. pp.* 1129-1133), that this witness, Mrs. Baker, was a woman of notoriously bad character — a prostitute as well as an illicit dealer in liquor. She admits on cross-examination that she was frightened and very much excited on the night of the lynching.

The defendant denies the statements of this witness. He says that when he arrived at the jail the woman was locked up in her cell, and she did not come downstairs at all that night. The only thing upon which this woman could have based her statement was a remark made by the defendant

Gibson when the mob arrived. When he heard them battering on the door below and demanding the negro, he, the defendant, (standing near the cell of the Baker woman) said: "I believe that is a mob."

(*R. pp.* 1128-1129.)

Houston Gibson, the 14-year-old son of Jeremiah Gibson, went with his father to the jail on the night of the lynching, and also testified that when they arrived the Baker woman had already been locked up in her cell. (*R. p.* 1007.)

The statement of the defendant as to what occurred on the night of the lynching is told in an honest, candid manner, and we submit that his statement is entitled to be believed.

The mob came to the jail and surprised him between 8:30 and 9 o'clock — battered down the door leading to upstairs where the defendant was at the time the mob arrived, and forced him to surrender the keys. Many members of the mob were armed, and they handled him roughly. He shows that he had no avenue of escape after the mob arrived, and no chance to communicate with the outside world. He was an old man 62 years old, and a veteran of the Civil War. (*R. pp.* 1019-1049.)

The defendant is criticised because he did not attempt to follow the mob, or arouse a posse to start in pursuit. Attorney-General Whitaker testified that immediately after the mob started away from the jail with the prisoner, he went to the jail and saw defendant Gibson and Captain Shipp, the sheriff. He said that both Captain Shipp and the de-

fendant Gibson had guns — "and Mr. Gibson was so excited the perspiration was rolling off of him in great beads." He also said that he informed these officers of the fact that he had attempted to arouse the police department and had failed. (*R. p.* 852.) The Attorney-General says that both Captain Shipp and the defendant Gibson were excited, and that he was excited himself.

The testimony of Houston Gibson, the little boy of the defendant Gibson, corroborates the statement of the defendant that on the night in question defendant had taken this little boy to the jail with him, and he remained with him until 8:30 when he let him go to the theatre.

There is not a word of proof in this record that shows that this old man was guilty of aiding or abetting the mob, or conspiring with the members of the mob in the lynching of Johnson. On the contrary, the very fact that he had his little son with him at the jail that night proves that he did not expect a party of armed outlaws to come and break in the jail and murder one of the prisoners.

Again, this witness, in a measure, identified one of the lynchers — Nick Nolan — and his testimony is relied upon by counsel for the Government as proof of said Nolan's guilt. Can the Court conceive that this man, if he were a conspirator with Nolan and others, would dare, or desire, to betray one of his associates? Why should he have testified against Nolan? Chivington, Curtis, and other witnesses for the Government, confessedly honest men, had the same opportunity to recognize Nolan that the defendant did, and

yet they did not do so. Surely a desire to speak the truth could be defendant's only motive in his testimony with reference to Nolan. Surely, if he nad been in sympathy with and aiding Nolan, he would not have given testimony against him.

Numerous witnesses testify to the defendant's good character.

Judge Clark says that he had known defendant since 1883, more than twenty-five years; that he was a man of good character. (*R. p.* 998.)

Respectfully submitted,

WILLIAM D. SPEARS,

ROBERT B. COOKE,

JAMES J. LYNCH,

Counsel for Defendant Jeremiah Gibson.

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MAR 1 1909
JAMES H. McKENNEY,
Clerk

No. 3. ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, 1908

THE UNITED STATES OF AMERICA

vs.

J. F. SHIPP ET AL

G. W. CHAMLEE,
J. A. HOOD,
W. H. CUMMINGS,
W. F. CHAMLEE,
Attorneys.

In the Supreme Court of the United States

OCTOBER TERM, 1908

UNITED STATES OF AMERICA, *Complainant*
vs.
J. F. SHIPP ET AL., *Defendants*

No. 5. Original

REPLY BRIEF FOR THE DEFENDANT, FRANK WARD.

The Court is well aware of the original proceeding to punish for contempt for an alleged disobedience of its own orders in this cause. For the purposes of the present hearing the facts and pleadings may be stated briefly and informally.

The information sets forth the conviction at Chattanooga, Tennessee, in the State Court, on February 11, 1906, of the negro Ed Johnson; the imposition of the death sentence; his subsequent petition for habeas corpus, which was heard by District Judge Clark and dismissed, and his application for an appeal to the Supreme Court of the United States; the granting of said appeal and the order to stay all proceedings in the State Courts. And after the granting of his said appeal, that he was taken from the jail in Chattanooga to the bridge over the Tennessee River and there killed.

A rule to show cause was issued upon the information of the Attorney-General. The defendant answered said rule and plead

"Not Guilty" and set out specifically that he was not present at the time of said lynching, no party to said killing and in general and specific terms plead "Not Guilty" to the charge.

Under proper orders of this Honorable Court the testimony has been heard, and we will now address ourselves to the testimony in the case as applied to the defendant Frank Ward. For the Government the proof against Ward is found on page 312 of the printed record containing the evidence in the testimony of one J. N. Stonecipher. Mr. Stonecipher says that he saw Mr. Ward on the evening before the lynching, and after stating that he saw him and telling the place where, in the City of Chattanooga, the following extract from his testimony contains all of the incriminating evidence presented by the Government against Ward:

"Q. When did you see Ward?

A. I saw him about five o'clock or a little after.

Q. Where did you see Ward?

A. I saw him in front of Mullery's Saloon on Market Street.

Q. Mullery's saloon?

A. Yes, sir.

Q. On what street is that?

A. Market Street.

Q. At about five o'clock?

A. At about five o'clock.

Q. What was said; did you have any conversation with him?

A. I stopped on the curb waiting for a car to go home and Ward called to me. He says, "Ain't you from Georgia?" I says, "I used to live there."

Q. What was that?

A. I stopped on the curb and Ward came out of the saloon. He hollered at me and called me by name. He said, "Ain't you from Georgia?" I says, "Yes, I used to live in Georgia—mighty near raised there." He says, "We want you to help us lynch that damned negro to-night."

Q. What was that?

A. He says, "We want you to help us to lynch that damned negro to-night."

Q. What did you say?

A. I says, "I don't believe it would pay. I believe Sheriff Shipp would shoot the red hot stuff out of you."

Q. What did he say?

A. He says, "No, it is all agreed. There won't be a sheriff nor a deputy sheriff there." I said, "Ward, I believe you are lieing." That is just what I told him.

Q. Did you have any further conversation with him that night?

A. No, sir."

On page 314 of the transcript the following extract is taken from the testimony of the same witness, Stonecipher, in which he claims to give an alleged conversation with the defendant, Ward, that occurred the day after the lynching:

"Q. What conversation did you have with Mr. Ward?

A. He came out of Jack Price's saloon and was standing in the vestibule, and he says, "You are the first damned man from Georgia ever I saw that didn't have nerve enough to kill a negro." I told him I did not have much nerve when I had to buck up against the Government.

Q. Did any of those men ever tell you the names of any of the persons who were in that mob?

A. Yes, sir, Ward told me several names in the mob.

Q. When did he tell you that?

A. It was along about the 10th of June.

Q. Of what year?

A. Last year."

On page 319 Stonecipher says other persons were present who heard Ward make the statements just quoted.

"Q. Who was present at Jack Price's saloon at the time you say you had that conversation with him there?

A. There were two or three present.

Q. Who were they?

A. My brother was one of them.

Q. What is his name?

A. H. M. Stonecipher.

Q. Where does he live?

A. He lives at Ridgedale.

Q. Who else was there?

A. I think Dave Bowles was there.

Q. Who is he?

A. He is a carpenter here in Chattanooga."

The Government proved by Mrs. J. H. Springfield and Claude Springfield in substance that Stonecipher and Ward boarded at her house for several months in the year 1903 and occupied adjoining rooms. That was about five years before this hearing was had. The object of that testimony was to try to show that Stonecipher was acquainted with Ward That in substance is all that there is in the record against this defendant, Frank Ward. In answer to that charge Mr. Ward took the stand as a witness in his own behalf and denied the charges against him contained in the information and in the contempt proceedings. On pages 690 et seq. will be found Mr. Ward's testimony, and we take from it material extracts.

"Q. Did you have any knowledge or intimation that there was going to be a lynching that night?

A. No, sir.

Q. Had you any agreement with anyone to help lynch Johnson that night?

A. No, sir.

Q. Or at any other time?

A. No, sir.

Q. I will ask you to state whether or not it came as a great surprise to you when you saw it in the morning paper?

A. Yes, sir.

Q. I will ask you to state whether or not you were about the County Jail that night?

A. No, sir.

Q. Or the County bridge?

A. No, sir; I was not about the bridge or the jail either, because that was the last place I would want to go.

Q. You did not conspire, confederate or agree with anybody to enter into the lynching at all?

A. No, sir.

Q. Had you heard it talked about beforehand?

A. No, sir.

Q. I will ask you to state whether or not you called J. N. Stonecipher out of Mullery's saloon or saw him in front of Mullery's saloon and asked him if he was from Georgia about five o'clock?

A. No, sir.

Q. On the evening or afternoon before the lynching?

A. No, sir.

Q. Did you at any other time?

A. No, sir.

Q. I will ask you to state if he said anything to you about his ever living in Georgia or being raised there?

A. No, sir, I would not know the man if I would see him.

Q. I will ask you to state whether or not you asked him to help lynch the "damned negro" that night?

A. No, sir; I am sure I would not ask a man I did not know anything such as that.

Q. Did you use any language to that effect?

A. No, sir.

Q. I will ask you to state whether or not you saw him in front of Jack Price's about five o'clock on the day following the lynching?

A. No, sir.

Q. I will ask you to state if you told him on the afternoon before the lynching in front of Mullery's saloon that it was all agreed that

there would not be any sheriffs and deputies at the jail that night?

A. No, sir, I don't know nothing about that at all.

Q. You say you had no conversation with him the day following the lynching in front of Jack Price's saloon?

A. No, sir.

Q. I will ask you to state whether or not you stated to J. N. Stonecipher in front of Jack Price's saloon about five o'clock on the day following the lynching, "You are the first damned man from Georgia I ever saw that did not have nerve enough to kill a negro?"

A. No, sir, I never said no such thing.

Q. Did you say anything like that to him?

A. No, sir, I did not.

Q. I will ask you to state whether you said that or anything like it to anybody else in his presence or hearing?

A. No, sir, I did not. I had no right to say no such thing.

Q. I will ask you to state whether you used any such language as I have asked about there or anywhere else?

A. No, sir.

Q. I will ask you to state whether or not you knew anything about the United States Supreme Court having taken jurisdiction of the Ed Johnson case at all?

A. No, sir.

Q. Before the lynching?

A. No, sir.

Q. When was the first time you knew they had taken any action in the case at all?

A. After he was lynched."

In the cross examination of Mr. Ward he said in answer to the Attorney-General:

"Q. Who was it told you after this lynching that the Supreme Court had made an order in the Ed Johnson case?

A. I seen it in the paper.

Q. What paper?

A. The Times.

Q. What day?

A. I think it might have been the 20th, I reckon.

Q. You mean the next morning you saw it in the Times?

A. Something like that. It might have been a day or two afterwards, but I know it was talked about that he was a United States prisoner.

Q. You did not know anything about it until you saw it in the Times the next morning or a day or two afterwards?

A. No, sir.

Q. You knew that Ed Johnson had been arrested and tried, did you not?

A. Yes, sir.

Q. But you did not know the Supreme Court had taken any hand in it or made any order with reference to the matter until after he was lynched?

A. No, sir.

Q. What was your business?

A. I am a bricklayer.

Q. Where were you working at that time?

A. I was working out at the United Pipe Works."

The witnesses in defense of Mr. Ward show that he was intoxicated on the night of this lynching and that he was physically unable to have participated in the lynching if he had been disposed to do so at the hour the lynching occurred.

"Q. I will ask you this question, Mr. Ward. Do you remember on the night of this lynching just prior to the time you retired waking up and finding yourself in the hallway of where you lived?

A. I waked up about 11 o'clock or a quarter past eleven or some time, I don't know what time it was, of course, but I was on the steps. The door was fastened, and I have a night lock on the door. I woke up and looked around and I seen I was at home and I went

up stairs and went to bed."

Mr. W. P. Barnes, a witness for the defendant, testified as follows:

"Q. What is your business?

A. I am in the saloon business.

Q. Do you know Frank Ward, one of the defendants in this case?

A. Yes, sir.

Q. How long have you known him?

A. About three years.

Q. Do you remember the time of the lynching of Ed Johnson?

A. Yes, sir.

Q. Where did Mr. Ward live at that time?

A. He lived up stairs at 1057½ Market street over my place of business.

Q. Where were you on the night of the lynching of Ed Johnson?

A. I was at my place of business.

Q. What hours were you there?

A. I was there from seven up until eleven.

Q. Did you see Frank Ward on that night?

A. Yes, sir.

Q. Where and at what time did you see him?

A. Why, he was in and out there several times during the night.

Q. How much of the time from 7 until 11 was he in and out of your saloon?

A. I suppose he was in and out about a half dozen times.

Q. Do you remember any incident that fixes it in your mind that he was there that night?

A. Yes, sir, he was drinking. He was on a drunk—a spree. He was in and out around my place. When I got ready to go—I locked up at 10 o'clock—I had some other business to fix up and I left there at 10 o'clock. When I went out he was out in the rear

in a chair. I slipped him inside the stairway and bolted the door to and that locked. He could go up stairs to where he lived, but he could not get anywhere else.

Q. Do you know where he was about your closing hour, about that time?

A. He was out on the street.

Q. When you closed your saloon?

A. Yes, sir, he was out there asleep.

Q. That was at 10 o'clock?

A. Yes, sir.

Q. There is an ordinance of the city requiring the saloons to be closed then?

A. Yes, sir, promptly at 10 o'clock.

Q. Did you see him at that hour?

A. When I locked the door, yes, sir. He was out in the street asleep. He wasn't asleep when I closed, but he was when I went away.

Q. How did it come that you closed your saloon at 10 and did not leave until nearly 11?

A. I close at ten o'clock every night. I have to do it. I stayed there for the purpose of arranging matters and straightening up matters for the next day.

Q. So you say it was near or about eleven when you left?

A. Yes, sir, it was very near eleven when I left there.

Q. And he was there at that time?

A. He had then gone to sleep out there in the rear at that time."

Mr. J. M. Prince, a witness for Mr. Ward, was bartender at Mr. Barnes' saloon and testified that he left the saloon at 8:20 the night of the lynching and that he was acquainted with Mr. Ward, and says:

"Q. Where did he live at the time of this lynching?

A. He lived up stairs over the saloon.

Q. State whether or not you remember seeing him on that night,

the night of the lynching of Ed Johnson?

A. Yes, sir.

Q. When and where did you see him?

A. He was in the saloon.

Q. There where you worked?

A. Yes, sir, right where I worked.

Q. You quit at 8:20?

A. Yes, sir.

Q. Was he there then?

A. Yes, sir.

Q. Was he there at the time you left?

A. Yes, sir.

Q. What was his condition that night?

A. Ha! ha! His condition was pretty serious.

Q. In what way?

A. In the way of drunkenness. He was pretty intoxicated; that is all, pretty well intoxicated.

Q. At the time you left at 8:20?

A. At 8:20, yes, sir. I left there at 8:20."

This witness was asked what occurred the next morning to fix it on his mind that Mr. Ward was in the saloon that night, and his answer was that in a conversation with Mr. Ward that he said, "Frank, if you had not been so damned drunk last night you might have been in that too." That is exactly what I told him. (Tr. page 686.)

"Q. And that fixes it in your mind that it was the morning after the lynching of Ed Johnson?

A. Yes, sir.

Q. Mr. Prince, from all the circumstances you have related I will ask you to state whether or not you were positive that he was there on the night you speak of, the night of the lynching up to 8:20?

A. Yes, sir."

Mrs. Ward, wife of the defendant, was called as a witness and testified in this case.

"Q. After supper, say from six to eleven, do you know where Mr. Ward was? Did you see him between the hours of six and eleven that evening?

A. Yes, sir.

Q. Where did you see him?

A. I seen him coming from a restaurant down the street coming up towards the saloon.

Q. Where is the restaurant with reference to Barnes' saloon?

A. It is just one door in between the saloon and the restaurant.

Q. Where did he go when you saw him?

A. He went in the saloon.

Q. What time was that, Mrs. Ward.

A. That was about half past nine. I think it was between nine and ten somewhere. I don't just remember when.

Q. I will ask you to state whether or not you saw him after that time?

A. Yes, sir, I saw him just after the door was closed. I heard Mr. Barnes close his saloon and heard the doors close and I went to the window and looked out and I saw Mr. Ward standing out on the pavement in front of the saloon with some man.

Q. What hour was that?

A. That was just about ten o'clock that I heard the doors close, you know, and I stepped to the window to see if I could see Mr. Ward.

Q. The saloon closed at 10 o'clock.

A. Yes, sir.

Q. That is an ordinance of the city that they close at ten o'clock?

A. Yes, sir.

Q. What time after that did you see him?

A. I don't think I saw him any more then until he came up and went to bed.

Q. About what time was that?

A. It was about eleven o'clock, between 10 and 11, somewhere close to eleven.

Q. I will ask you to state what was his condition that night?

A. Well, he was very much intoxicated.

Q. I will ask you to state whether or not he stayed at home that night?

A. Yes, sir, he didn't leave any more that night.

Q. When was the first time that you heard of the lynching of Ed Johnson?

A. The next morning."

She says she fixes the time in her mind because of the fact that "he was drinking more then than he had usually been, and that morning (after the lynching) when he came up and told me about it I spoke to him about drinking so much, you know."

"Q. You gave him a lecture?

A. Yes, sir.

Q. That was the next morning at breakfast?

A. Yes, sir." (Tr. p. 1004.)

Walter D. Spradley next witness for Ward. Tr. p. 1044.

The said witness, J. N. Stonecipher, was impeached upon the trial of this cause by the following witnesses:

Dr. A. W. Boyd, Tr. p. 509.

W. B. Cox, Tr. p. 512.

J. R. Pitner, Tr. p. 704.

H. D. Rider, Tr. p. 708.

T. J. Moody, Tr. p. 711.

T. J. Sholl, Tr. p. 716.

Ewing White, Tr. p. 659.

M. F. Pitner, Tr. p. 661.

In addition to this Stonecipher is contradicted by the testimony of the defendant, Frank Ward; of Mr. Alfred Hammond, who was a defendant, and who has been dismissed, and also by the defendants

Padgett and Mayes.

In addition to that his testimony is discredited by other proof, that on Walnut street between the jail and the county bridge there was white mud, when it was shown that the conditions that he described and claimed as existing in that street were not as sworn to by him. In this record it appears also that he had been in trouble in the State of Georgia for misappropriating valuables coming into his possession in the postoffice. All of these items with a bad character proven for this man renders his testimony utterly worthless; he is unworthy of belief, and upon the testimony alone of such a man no court would be justified in imposing punishment. The government tried to sustain his character, and called for that purpose G. F. Neese, Tr. p. 1145; S. H. Ledford, Tr. p. 1149; Chas. Smith, Tr. p. 1152, and A. J. Cox, Tr. pp. 1154-5-6.

These witnesses called by the government do not even qualify to speak as character witnesses, and all admit that they do not know his general character, but simply speak of him from what they know of him and which is very limited of their own personal knowledge.

On cross examination Mr. Neese says:

"Q. You never heard his reputation discussed among the people who knew him?

A. No.

Q. You have never heard anybody talk about him one way or the other, have you?

A. No, I never did.

Q. And you are testifying of his character now from your own knowledge, are you?

A. From what I know about him, yes, sir.

Q. And not from the reputation that his neighbors would give him if they were called on to testify?

A. No, for I don't know anything about that."

(Here exceptions were taken to all the testimony of this wit-

ness.)

S. H. Ledford testified as follows:

"Q. Did you ever know John N. Stonecipher?

A. Why, yes, sir.

Q. How many years?

A. Why, I suppose I have known him for, well thirty years.

Q. Do you know his general reputation and character in the community in which he lived down in Georgia?

A. Well, up to about ten years ago when I moved from the neighborhood where he was raised and where I lived.

Q. Up to that time until you moved did you know his general reputation?

A. Yes, sir.

Q. Was it good or bad?

(Exceptions for defendant.)

Q. Did you answer the question, Mr. Ledford? Was that general reputation good or bad?

A. Well, I will say this; with the exception of something that occurred while he was postmaster. There was some talk of his not performing faithfully with money——

Q. Was his general reputation good or bad?

A. Why, outside of that it was good.

Q. You never heard anybody say that J. N. Stonecipher had a good character, did you?

A. I don't think I ever heard them say.

Q. You never heard anybody say they would believe John Stonecipher on oath, did you?

A. I don't think I ever heard it. No.

Q. And the only thing you ever heard said about his character was that he had robbed the Government out of some money while he was postmaster; is not that true?

A. Well, they discussed that. I could not say how it was.

Witness Charlie Smith said on cross examination relative to

Stonecipher:

"Q. You never heard anything said about his reputation about truth and veracity, did you?

A. No, sir, I didn't.

Q. You never heard anything said about whether he would testify truthfully or falsely on oath?

A. No, sir, I did not.

Q. You don't know anything about his reputation amongst the people where he lives?

A. No, I do not."

A. J. Cox on cross examination testified as follows:

"Q. Who did you ever hear say anything about this fellow John Stonecipher?

A. Not anybody.

Q. Not anybody?

A. No, sir.

Q. And not ever having heard anybody say anything about him, you then come into court and swear that he has a good character?

A. So far as I know.

Objections made to the testimony of all the witnesses to sustain Stonecipher's character, on the ground that none of them qualified as required by law.

These objections are all now renewed upon the hearing, as not a single witness who was called by the government to sustain Stonecipher's character qualified under the law.

DISCUSSION.

The Government has failed to make out its case against the defendant, Frank Ward, upon two grounds, either of which entitled him to his discharge before this Honorable Court:

1st. The proof fails to show that he had any connection whatever with the lynching.

2nd. The proof fails to show that he had any knowledge of

the fact that this Honorable Court had acquired jurisdiction of the case of "Ed Johnson vs. the State of Tennessee," and in the absence of such information he could not be guilty of contempt of this Honorable Court. In other words, to make the defendant guilty of a contempt of this Honorable Court it is necessary that he should have in his mind at the time of the commission of the unlawful act, knowledge that this Honorable Court had taken jurisdiction of the Ed Johnson case and his participation either by aiding or abetting in the alleged lynching should be prompted by a spirit of disrespect for the orders of this Honorable Court. On both of these questions the government has wholly failed to make out its case.

The weight of the evidence shows clearly and conclusively that at the very hour of the lynching that the defendant Ward was at the saloon of W. P. Barnes under the influence of strong liquor to such an extent that the witnesses say he was drunk, and probably asleep.

As there is no question about the law in this case, since it has been argued on a preliminary question heretofore, we do not undertake to present any authorities touching this case in the brief, but will present them in the oral argument, if any are desired at the hearing.

We most earnestly and respectfully insist that this defendant is an innocent man; that the proof against him is in the testimony alone of J. N. Stonecipher and that Stonecipher has been successfully impeached and that the defendant Ward has proven a satisfactory alibi, and that he had no knowledge that this Honorable Court had acquired jurisdiction of this cause.

Respectfully submitted,

G. W. CHAMLEE,
J. A. HOOD,
W. H. CUMMINGS,
W. F. CHAMLEE,
Attorneys.

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In the Supreme Court of the United States.

UNITED STATES OF AMERICA,
Complainant,

vs.

J. F. SHIPP, ET AL.,
Defendants.

No. 5 ORIGINAL,
OCTOBER TERM,
1908.

REPLY BRIEF FOR THE DEFENDANT, LUTHER WILLIAMS.

G. W. CHAMLEE,
W. H. CUMMINGS,
W. F. CHAMLEE,
Attorneys.

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No. 5 ORIGINAL,
OCTOBER TERM,
1908

REPLY BRIEF FOR THE DEFENDANT, LUTHER WILLIAMS.

The court is well aware of the original proceeding to punish for contempt for an alleged disobedience of its own orders in this cause. For the purposes of the present hearing the facts and pleadings may be stated briefly and informally.

The information sets forth the conviction at Chattanooga, Tennessee, in the State Court on February 11th, 1906, of the negro Ed Johnson; the imposition of the death sentence; his subsequent petition for habeas corpus, which was heard by District Judge Clark and dismissed, and his application for an appeal to the Supreme Court of the United States; the granting of said appeal and the order to stay all proceedings in the State Courts. And after the granting of his said appeal, that he was taken from the jail in Chattanooga to the bridge over the Tennessee river and there killed.

A rule to show cause was issued upon the information of the Attorney-General. The defendant answered said rule and plead "not guilty" and set out specifically why he was present at the time

of said lynching, but that he was no party to said killing and in general and specific terms plead "Not guilty" to the charge.

The government has filed its brief, insisting that the defendant, Luther Williams, is guilty and is citing the testimony of A. J. Ware and a colored man named Lyons in order to try to sustain its case.

We now call the attention of the Court to the testimony of these two witnesses:

Mr. Ware stated that he saw the lynching at the bridge.

Q—Did you see anybody fire any bullets in him (Johnson)?

A—Yes, I saw some man shoot him.

Q—Who was that?

A—I don't know who it was.

Q—Whom did you recognize as the man?

A—I thought it was Luther Williams.

Q—How long have you known Luther Williams?

A—I have known him some four or five years.

Q—How often do you see him?

A—Not often.

Q—When this man you thought was Luther Williams was shooting, how close was you to him?

A—It was about 22 or 23 feet.

Q—Twenty-two or 23 feet? Did you recognize anybody else there that night, Squire; did you see anybody help to put the noose around his neck with the man you thought was Nolan?

A—I don't know that I recognized anyone positively. I don't know that I can remember now of anybody else that I even thought I knew.

Q—Make your best efforts to recall and see if you can recall anybody else that you recognized there that night; anybody else that was shooting or helping with the noose or helping to bring him out from the jail?

A—I did not recognize anyone coming out of the jail. I thought I recognized one, that was all.

Q—The man you have already spoken of?

A—Yes.

Q—That is Warner?

A—Yes.

Q—Did you recognize anybody helping him?

A—I said I did not.

On cross-examination he gives the following testimony:

Q—You do not say it was Luther Williams, a defendant in this case, who was the man you saw there?

A—I don't say it was him positively; no, sir. I would not make affidavit that it was him.

Q—You don't know who the man was?

A—I am not sure as to who it was.

RE-DIRECT EXAMINATION.

By Mr. Sanford:

Q—You knew all of these men though at that time; you had known all of these men before?

A—Oh, yes.

Q—And you thought at that time they were the men you have named?

A—Not any more than I think now. My opinion is as strong now as it was then.

Q—Your opinion is as strong now as it was then?

A—Yes, I don't know whether it was then or not.

Q—But you thought it was?

A—I thought it was.

Q—Was it or not your best impression at the time?

A—Well, I thought it so strongly that I am telling you I thought it was them. If I had not thought it was them at the time I would not say so now; but I would not make affidavit that it was Luther Williams and neither would I that it was Nick Nolan nor Sheeny Warner, because it was so dark that you could scarcely recognize a man.

Q—Except the one you saw in the lobby?

A—I walked up by the side of Mr. Pritchard right against his

shoulder before I was sure it was Bob Pritchard and I have known him since he was a boy. Tr. p. 395 and 399.

Mr. Ware was recalled as a witness and asked again relative to the lynching.

By Mr. Sanford:

Q—Did you see Luther Williams there on the bridge?

A—I gave my testimony in that case that I thought I saw him but that I would not make affidavit that it was him.

Q—What did you see him do?

A—I don't say I saw Luther Williams do anything.

Q—What is your recollection as to the man you took to be him?

A—He shot the negro when he fell.

Q—How many times?

A—Five.

Under cross-examination he said:

By Mr. Chamlee:

Q—In your testimony the other day you stated then that you did not know whether the man you refer to as Luther Williams was in fact Mr. Williams or not. You did not know it at the time and you did not know it then?

A—I so stated at that time.

Q—You don't know now whether it was Mr. Williams or not?

A—No, sir.

Q—That was a mere impression you had; that is all you undertook to say?

A—That is what I said.

Q—You have been a justice of the peace and a judicial officer for a number of years?

A—Yes, sir.

Q—And you would not go before a court and convict any man on what you say about Luther Williams, would you?

A—I would not.

Exceptions for the Government.

Q—Anyway, you are the judge of what you know about it, and your testimony the other day and what you mean to say now is that you saw a man there and with the slight sight you had of him it seemed to you it might be Mr. Williams?

A—Yes, sir.

Q—But you do not [illegible] and you did not say it was the other day, and you wou[illegible]ay at all that it was Luther Williams?

A—No, sir.

Q—And you do not undertake to create the impression that by having known him for a good while you were swearing now it was Mr. Williams?

A—I do not.

Q—You do not want that impression to be made at all by your testimony that it was Mr. Williams?

A—I do not. It was simply an impression of mine at the time. That is what I stated the other day.

Q—And it is the same with reference to Mr. Warner, that your impression then was that it was him, but you do not want to convey the impression that you are swearing now it was either the one or the other?

A—I do not swear it was him. Tr. page 534, 535, 536.

The other witness, Robert K. Lyon's testimony relative to the defendant Williams, was as follows:

Q—Did you see anybody in the crowd where he was shot or hanged, as the case might be, that you knew?

A—Yes, sir. I saw some leaving there.

Q—Now give us the names of any you saw leaving there?

A—I saw one subject by the name of Williams to my best knowledge.

Q—What is his given name?

A—Luther, I think.

Q—Does he live in Chattanooga?

A—I think he do; yes, sir, he do.

Q—How long have you known Williams?

A—I have known Williams for some years.

Q—About how many years? You knew him well when you saw him?

A—Yes, sir.

Q—Did he tell you anything as he came out towards you?

A—Not a word did I hear him say.

Q—Did he come fast or slow?

A—He come in a pretty rapid gait. He just come walking leisurely along. He wasn't in a hurry and he wasn't anyways slow.

Q—Did he have any fire arms?

A—None as I saw.

Q—You did not see any fire arms?

A—No, sir.

Q—Was Williams the only man you saw coming from that direction?

A—The only one that I knew.

Q—Williams came across from the crowd around Johnson to your crowd?

A—He came from the north end of the bridge to the south end.

Q—Johnson was towards the north end?

A—Yes, sir, he was hung on the east side of the bridge.

On cross-examination he stated:

Q—Williams left you up there near the place (of the lynching) and he came on towards town?

A—He never left me. He passed by me.

Q—Did you speak to him?

A—No, sir.

Q—How long was he away from there before they strung Johnson up?

A—When I saw Williams, why, Johnson had been strung up.

Q—This was after the lynching?

A—Yes, sir.

Q—Did you see anybody else come along there besides Williams?

A—I saw a great many people, indeed I did.

Q—Were any of them lynchers?

A—I don't know, and I have never said that Mr. Williams was a lyncher either. I just saw him coming from that direction.

Q—You don't know whether he had anything to do with the lynching or not?

A—No, sir, I don't. I could not say or swear he did, but I know he came from the direction where the lynching was. Tr. page 351 and 354.

Mr. R. E. Pritchard testified as follows:

By Mr. Sanford:

Q—Did you see who fired the shots?

A—Yes, sir.

Q—Who was it fired the shots?

A—The man that fired the shots was a man that I did not know. Do you want me to tell you about that man?

Q—Yes, that is what I asked you.

A—The man who fired the shots was not Bart Justice or Luther Williams. It was a man who very much resembled Bart Justice who has a moustache; but is lower and who has as much stomach on him and more muscular man and a man I never saw but once before. I met him on Cherry street when there was no one around from whom to find out who he was. The day after the lynching he stopped me and says ———

Q—I am not asking what the man said to you the next day but what you saw that night?

A—That is the next time I saw him and that is the only other time I saw him. Tr. page 780 and 781.

By Mr. Chamlee:

Q—You saw the man on Cherry street after the lynching was over as I understand, that fired the shots into the body of Johnson, the day following?

A—Well, as near as I could be sure of any two men whom I never had seen before, that was the man.

Q—The man spoke to you and said something to you about the lynching?

A—Yes, sir.

Exceptions for the government.

Q—I will ask you to state whether or not the man that you saw fire the shots into the dead body of Ed Johnson was either Luther Williams or Nick Nolan or Bart Justice?

A—No, sir. The man that fired the shots into the man's body was not any man that is a defendant in this case so far as I have seen.

Q—You know all of these three men I have named, Nolan, Justice and Williams?

A—Yes, sir, I know them when I see them. Tr. page 783.

The defendant, Luther Williams, testified in part as follows:

Q—Is your name Luther Williams?

A—Yes, sir.

Q—Are you one of the defendants in this case?

A—Yes, sir.

Q—Mr. Williams, do you remember the night it is said that Ed Johnson was lynched on the 19th of March, 1906?

A—Yes, sir.

Q—Did you go up to the jail that night?

A—Yes, sir.

Q—Did you have anything to do with the cutting of those doors or the helping to get Johnson or lynch him or anything of that kind?

A—No, sir.

Q—Did you have anything at all to do with it?

A—No, sir.

Q—Did you have anything to do with helping to take him out of the jail or taking him to the bridge?

A—No, sir.

Q—Did you have anything to do with helping to lynch Johnson?

A—No, sir.

Q—Did you have anything to say or did you aid anybody else in any way in lynching Johnson?

A—No, sir.

Q—Did you have any pistol or were you armed in any way?

A—No, sir.

Q—Out at the bridge after the man had been lynched did you walk up and shoot five bullets into him?

A—No, sir.

Q—Did you shoot him at all or have anything to do with shooting him?

A—No, sir.

Q—Did you know anybody else that shot him?

A—No, sir.

Q—Mr. Williams, did you know or had you heard previous to this lynching on that day or any other time previous to this that there was going to be any lynching of Ed Johnson that night?

A—That night?

Q—Yes.

A—No, sir, not a word.

Q—Did you have anything to do with it or talk to anybody about getting up a crowd to lynch Johnson or in any manner or in any way in the world have a thing to do with proposing the getting up of this mob to lynch Johnson?

A—No, sir.

Q—Did you have anything to do with the lynching after the mob got him, or help in any way to break the jail or do anything that would aid in the lynching of Johnson?

A—No, sir.

Q—Were you there at the jail and at the bridge where the lynching occurred simply as a spectator.

A—Yes, sir.

Q—I will ask you to state whether or not you went there for the

purpose of taking any part or having any hand whatever in the lynching of Ed Johnson?

A—No, sir.

Q—Did you have any mask on or were you in any way disguised?

A—No, sir. (Tr. page 738, 739, 740, 741.)

Mr. Williams proved a good character by the following witnesses:

By Mr. Chamlee:

Q—Mr. Geismar, do you know the defendant, Luther Williams?

A—I do.

Q—How long have you known him?

A—About five or six years.

Q—Do you think you know what the majority of his neighbors would say about him if they were called on to speak of his general character?

A—I do.

Q—Is that general character good or bad?

A—Good.

Q—From that general character would you give him full faith and credit on his oath in a court of justice?

A—I would.

Q—As to his being a peaceable and law-abiding citizen, Mr. Geismar, do you think you know his character on that subject?

A—I do.

Q—Is that character good or bad?

A—Good.

J. O. Martin, witness.

By Mr. Chamlee:

Q—Do you know the defendant, Luther Williams?

A—Yes, sir.

Q—How long have you known Mr. Williams?

A—I have known Mr. Williams I think six or eight years, possibly ten years; I am not sure about that.

Q—Do you think you know his general reputation and character in the community in which he lives; that is, what the majority of the neighborhood would say about him if they were called on to speak about him?

A—Yes, sir, I think I do.

Q—Is that general reputation good or bad?

A—It is good.

Q—From that general reputation is he entitled to full faith and credit on his oath in a court of justice?

A—Yes, sir.

Witness, Samuel A. Connor.

By Mr. Chamlee:

Q—Do you know the defendant, Luther Williams?

A—Yes, sir.

Q—Do you think you know the general reputation and character of Mr. Luther Williams, defendant in this case, in the neighborhood in which he lives?

A—Why, I think I do very well, yes sir.

Q—What is that general reputation and character, good or bad?

A—It is good so far as I know.

Q—From that general reputation and character is he entitled to full faith and credit on his oath in a court of justice?

A—Yes, sir.

By Mr. Sanford:

Q—Did Mr. Williams ever get into any trouble that you heard of?

A—Yes, sir.

Q—What was that?

A—He had a difficulty with a negro.

Q—What was the result of that?

A—Why, he killed him.

Q—Did he ever kill anybody else?

A—Not that I know of.

By Mr. Chamlee:

Q—I will ask you if you had not also heard in reference to this same matter that it was an entirely justifiable killing?

A—Yes, sir.

Objections by the Government.

Q—State if you know what was the result of that trouble?

A—I understand the negro was advancing on him with a knife and Mr. Williams shot him.

Q—And he was tried in the courts and acquitted?

A—Yes, sir.

Next witness, C. W. Cox.

By Mr. Chamlee:

Q—Do you know the defendant, Luther Williams?

A—Yes, sir.

Q—How long have you known him, Mr. Cox?

A—Why, I could not say. Eight or ten years, I guess.

Q—Do you think you know his general reputation and character in the community in which he lives?

A—Yes, sir.

Q—Is it good or bad?

A—I imagine it is good. I never heard anything to the contrary.

Q—From that general reputation is he entitled to full faith and credit on his oath in a court of justice?

A—I suppose so. I would believe him on oath. I never heard anything to the contrary. I take it for granted that it is good.

Witness, E. G. Spencer.

By Mr. Chamlee:

Q—Do you know the defendant, Luther Williams?

A—Yes, sir.

Q—How long have you known Mr. Williams?

A—Seven or eight years, probably longer.

Q—Do you think you know his general character and reputation in the neighborhood in which he lives; that is, what the majority of the people would say about him if called on to speak?

A—Yes, sir, I think I do.

Q—Is that general reputation good or bad?

A—I think it is very good. I never heard anything against him in regard to his character.

Q—From that general character is he entitled to full faith and credit on his oath in a court of justice?

A—He is considered so, yes, sir.

Witness, B. A. Close.

By Mr. Chamlee:

Q—Mr. Close, are you acquainted with the defendant, Luther Williams?

A—I am.

Q—Now, Mr. Close, do you think you know the general reputation and character of Mr. Williams in Chattanooga?

A—I think I do, yes, sir.

Q—Is that general reputation and character good or bad?

A—It is good.

Q—From that general reputation is he entitled to full faith and credit on his oath in a court of justice?

A—I think so.

Witness, T. G. Newman.

By Mr. Chamlee:

Q—Do you know the defendant, Luther Williams?

A—Yes, sir.

Q—How long have you known him, Mr. Newman?

A—Four or five or six years.

Q—I will ask you if you think you are acquainted with the general character and reputation of Luther Williams?

A—I think I am.

Q—Is that general reputation and character good or bad?

A—It is good.

Q—From that general reputation and character is he entitled to full faith and credit on his oath in a court of justice?

A—I think so.

DISCUSSION.

The cross-examination of these witnesses may take some of them without the rule, but there is enough in this record to show beyond any question or controversy that Mr. Williams' record for truth and veracity is good and that he is entitled to full faith and credit on his oath in a court of justice.

The Government has failed to show that Mr. Williams did anything in the world in aiding or assisting in the lynching of Ed Johnson. It has failed to show that he had any knowledge that this Honorable Court had acquired jurisdiction of the case of Ed Johnson vs. the State of Tennessee. His answer denies every material allegation made against him in the information filed by the Attorney-General.

Counsel for the Government in the brief for the Government leave the impression that Mr. Ware swears positive that Mr. Williams was the man that shot five bullets into the dead body of Johnson as it lay on the county bridge. This is shown to be clearly erroneous, and a careful reading of Mr. Ware's testimony does not sustain the contention of counsel for the Government. It is most earnestly insisted that the proof shows that Mr. Williams was simply present as a spectator as were numbers of other people, but that he took no part in the lynching and is not guilty in any man-

ner or in any sense of the charges made and was in no way responsible for the death of Ed Johnson. It is, therefore, confidently urged that the charge against Mr. Williams is not proven and that he should be dismissed.

Respectfully submitted,

G. W. CHAMLEE,
W. H. CUMMINGS,
W. F. CHAMLEE,
Attorneys.